IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 360 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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NATVARLAL VALLABHBHAI PRAJAPATI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS RV ACHARYA for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 02/03/2007

ORAL JUDGMENT

1. The present appeal is preferred by the appellant-orig.accused (hereinafter referred to as 'the appellant') of Special Case No.1 of 1987, tried by the learned Special Judge, Valsad at Navsari for the offences punishable under Section 161 of the Indian Penal Code and

Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the Act'). The learned trial Judge vide his judgment and order of conviction and sentence under challenge dated 06th June, 1989, has held the appellant guilty of the charge levelled against him and sentenced him to undergo rigorous imprisonment for one year and a fine of Rs.1000/- for each offence punishable under Section 161 of the Indian Penal Code and Section 5(2) of the Act, and in default of making payment of amount of fine, shall undergo simple imprisonment for three months.

2. Ms.R.V. Acharya, learned counsel appearing for the appellant, has taken this Court through the grounds of challenge mentioned in paragraph no.3 of the memo of the appeal and so also relevant part of the oral well as documentary evidence led during the course of trial. According to Ms.R.V. Acharya, the finding recorded by the learned trial Judge is based on erroneous appreciation of evidence

and the same is nothing but a guess work and conjecture. This is a case wherein the appellant even as per the story of the prosecution had never demanded the amount of bribe/ illegal gratification and, therefore, the alleged recovery of muddamal currency notes of Rs.60/- cannot be equated with the recovery of bribe amount or the amount received as illegal gratification by the appellant. This case falls in the category of mere recovery of the amount and therefore, the appellant was at least required to be given benefit of doubt.

3. Shri A.J. Desai, learned Additional Public Prosecutor, appearing for the respondent-State by reading the relevant part of the oral evidence as well as the documents referred to by the learned trial Judge, has submitted that the finding recorded by the learned trial Judge is based on sound reasons. There is no element of either conjectures or surmises. The panchnama has been rightly appreciated. Some

part of evidence of the complainant if is considered in the background of the evidence led by the panch no.1 and the answers given by the panch no.1-PW-4 in the cross-examination, it emerges clearly beyond reasonable doubt that the bribe amount of Rs.80/- was to be given to the appellant by the complainant. The appellant had agreed to accept the said amount. However, on account of request extended by the complainant, the appellant had tried to return the amount of Rs.20/- from the total bribe amount of Rs.80/- and the appellant pocketed the remaining amount of Rs.60/- in presence of panch no.1-PW-4, who is an independent witness. When there is neither any allegation against the panch no.1 nor there is any allegation against the Investigating Officer of substantive nature, whereby it can be inferred that this panch no.1 was selected purposefully, there was no reason for the learned trial Judge to discard the panchnama, mainly the second part of panchnama. It is in evidence that when the

hands of the appellant were seen under the ultraviolet lamp rays, both hands of the appellant were found stained with anthracene powder and the amount of Rs.60/- as narrated in the panchnama was recovered from the pocket of the appellant, which was lying with one small plastic wallet of the appellant. It is proved beyond reasonable doubt that the appellant was on duty in his office and as a public servant, he was discharging his duty. It is a case where the prosecution has not come forward with a case at all that a particular amount was demanded by the appellant on a particular day or a place. The story of the prosecution is consistent that the appellant was demanding and accepting the extra charge of 40% of the actual Government fees, which was otherwise payable to the State for the exercise which is required to be carried out by the officials of the Weights and Measures Department. The fees are prescribed, is not the matter of dispute since the competent officer is issuing certificate

qua the instruments of Weights and Measures. In the present case, the legitimate fees payable by the complainant to the Government was of Rs.200/- and how and why the complainant was required to pay an amount of Rs.200/- to the appellant has been described by him in the complaint itself. So the acceptance, according to Shri A.J. Desai, has been satisfactorily proved by the prosecution and obviously therefore, the learned trial Judge was entitled to raise the presumption against the appellant. The only crucial question before the learned trial Judge was whether the appellant has successfully rebutted this presumption or not ? If the statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, 1973, is appreciated, there is no element of explanation capable of rebutting the presumption qua the amount accepted by him. On the contrary, the appellant has claimed that because of some inimical feelings and as he had acted against the complainant in the

recent past, the complainant created a false case and implicated the appellant in the ACB trap with the help of the Trapping Officer.

4. Firstly at this stage, the facts of the prosecution case, which are reflected in the charge Ex.6 framed by the learned trial Judge, are required to be stated in brief which are as under :

> “First : That on 5.11.85 you were working as a public servant being Senior Weights and Measures Inspector in Navsari and in the capacity of such a public servant, you have demanded or tried to accept an amount of Rs.80/- from the complainant, who is holding the licence of repairing the Weights and Measures and who had come to you for getting his instruments stamped, over and above the Government fees, except any legal fees, and by doing so you have committed an offence

punishable under Section 161 of the Indian Penal Code, which falls under the jurisdiction of this Court.

Second : On the aforesaid date at 04-00 p.m. in your office at Navsari, you, by way of corruption or illegally misusing your post being a public servant, have obtained an amount of Rs.80/- in cash from the aforesaid complainant in response to your demand and by doing so, you have committed an offence punishable under Section 5(2) of the Prevention of Corruption Act."

5. Ms.R.V. Acharya, learned counsel appearing for the appellant, has pointed out that it is neither the case in the complaint Ex.17 recorded on the very day of trap i.e. 5th November, 1985, nor in the deposition of the complainant that the amount of bribe of Rs.80/- was demanded prior to drawing of the first part of panchnama or the second part of

panchnama. The narration in the complaint is that the appellant is in the habit of extorting bribe amount from the persons who come to the office of Weights and Measures Department to get their work done or to obtain the certificate. The appellant had developed a practice that everybody whomsoever comes to him shall have to pay 40% charge towards bribe of the actual fees. The prosecution was under obligation to prove this corrupt practice developed by the appellant. It was possible for the Investigating Agency to collect the evidence in this regard that such practice was developed, by examining the witnesses coming to the said Department for such or similar work. The names of such persons could have been traced from the record of the office of the appellant. On bare words of the complainant, the Court ought not to have accepted that the appellant had developed such a corrupt practice to extort bribe of 40% of the actual fees to be paid to the Government; otherwise he would linger the matter and try

to harass the visiting citizen approaching him to have necessary licence/ permission or certificate required to be obtained under the statutory scheme of Standard of Weights and Measures Act, 1976. So this is a case where the prosecution cannot be said to have proved one of the basic element of demand. While reading the relevant part of the panchnama Ex.24 drawn by the Investigating Officer in presence of two panchas, which is at page No.107 of the paper-book, Ms.R.V. Acharya has drawn attention of the Court at page Nos.50, 115, 116 and 117 and has submitted that there is no consistency in the evidence of panch no.1-PW-4-Kalidas Patel and the complainant, qua the sequence of events that had occurred. It is clear from the evidence that the receipt Ex.12 was prepared and torn out from the book by the appellant after receipt of bribe amount of Rs.80/- and placing one currency note of Rs.20/- on the table with a view to return the same to the complainant. This crucial document Ex.12 i.e. receipt, was not brought under the

ultraviolet lamp rays and therefore, there is no evidence whether it was stained with anthracene powder or not. In the same way, the complainant had started marking stamps on the articles he had brought for certification before the complainant left the office room with a view to give signal to the raiding party officials, who were outside the office premises. Neither these articles nor the stamps used by the complainant were brought under the ultraviolet lamp rays. It is obvious and the panch no.1 has admitted that all these articles normally would have stains of anthracene powder. The Investigating Officer has intentionally attempted to put curtain on this fact by not doing that exercise or by not incorporating the same in the panchnama. It is admitted by panch no.1-PW-4 as well Shri Brahmbhatt, Police Inspector and Trapping Officer that certain things are not mentioned specifically in the panchnama and such an error has been committed by the Investigating Agency. The learned trial Judge ought to have

given benefit of this infirmity to the appellant. In an ACB trap case, the prosecution is supposed to put and prove a clear cut case and there should not be any shadow of doubt. The status of the complainant -PW-1, who has been examined vide Ex.16, is of accomplice nature. It is clear from his evidence that he was aware about the practice developed by the appellant and he had paid the amount in past also. His one machine was cleared by the very appellant. Therefore only, he has stated that even after paying the amount of bribe, he was harassed by the appellant and, therefore, he had decided on that particular occasion that an ACB trap is required to be laid down and the appellant is required to be dealt with appropriately. It is clear from the evidence that the complainant was supposed to disclose the names of the customers whose instruments of weights and measures were being brought before him for repairing and certification and it is in evidence that the amount paid as bribe amount

to the appellant was ultimately adjusted and the customers were charged accordingly. It is mentioned by the complainant and his father that they were also even adjusting their books of accounts and they were considering the amount paid as bribe while stating the miscellaneous expenses incurred by them. So when such a complainant and his father were there before the Court, their evidence was required to be scanned closely and their versions ought not to have been accepted as gospel truth. It is the say of the appellant himself and so also the complainant that the relation between the appellant and the complainant was inimical or at least was not cordial. This factor was ignored by the learned trial Judge while accepting the version of the complainant. The evidence of Pws-2 and 3 does not carry the case of the prosecution any further. It is argued by Ms.R.V. Acharya, learned counsel appearing for the appellant, that certain answers given by the PW-4 panch no.1, who was the Range Forest

Officer, that the entire panchnama was not dictated either by him or by the panch no.2, were required to be taken into consideration. When he has admitted that some part of the panchnama does not describe the actual exercise which was carried out and some important crucial aspects, which ought to have been mentioned in the panchnama, are not mentioned. So the panchnama ought not to have been accepted as reliable piece of evidence and the learned trial Judge ought not to have used this panchnama as corroborative piece of evidence while evaluating the evidence of the panch witness i.e. panch no.1. There is confusion as to whether the receipt Ex.12 was lying on the table when the raiding party entered into the office of the appellant on receipt of the signal given by the complainant or not ? The amount of fees of Rs.200/- was lying on the table, and in the same way, the currency note of Rs.20/- initially given to the appellant as part of bribe amount was also lying on the table. The complainant himself

was not sure whether the receipt Ex.12 was lying on the table or it was with him or it was recovered during the course of drawing second part of panchnama. The panch no.1 is also not sure about the same and the same is the case with the Police Inspector Shri Brahmbhatt (Ex.26, page no.125 of the paper-book). The amount of bribe is paid qua the work which was required to be done by the appellant on 05th November, 1985 and for which the complainant was required to pay fees of Rs.200/-. So the recovery of receipt of Rs.200/-, Ex.12, would be relevant and when the recovery of a particular document is found relevant, then the Court should ascertain that from where or from whom it is being recovered. These articles were lying at the same place at the time of their recovery or their seizure, whether these articles were stained with anthracene powder or not ? The confusion which is emerging from the evidence throws shadow of doubt on the strength of the case of the prosecution. Same is the situation qua stamps,

which might have been used for affixing the same on the articles which were brought for certification. It is clear from the evidence as well as the explanation given by the appellant that the complainant was out to see that the appellant is removed or otherwise relieved from the post. It is in evidence even of the father of the complainant that more than one attempts were made to see that the appellant is transferred from the very department. It is admitted position that as the complainant had not got a favourable result, depite making two written complaints, the father of the complainant had advised him accordingly. Of course, the complainant has not admitted that the complaint was made to the ACB Police Station on account of advice given by his father but he has also not denied this aspect and, therefore, the scope of false implication ought to have been accepted by the learned trial Judge and the appellant could have been given benefit of doubt. Placing reliance on one decision reported in ***2006(1)***

SCC 401, in the case of T.Subramanian v. State of T.N., it is submitted that this is a case of mere recovery of the muddamal currency notes from the appellant and not a recovery of the amount of illegal gratification received. The prosecution was under obligation to prove beyond reasonable doubt as to the demand made immediately prior to passing of bribe amount from the complainant to the appellant and there is an element of inconsistency. It is the say of the prosecution that even before taking out the bribe amount from pocket by the complainant with a view to giving the same to the appellant, there was no verbal demand of money and the alleged demand which the prosecution has attempted to prove is a demand made by gesture by playing with eyes. In vernacular Gujarati language, the witnesses have mentioned two different words; one witness has used the word “Isharo” (indication) and the other witness has used the phrase “Aankh Minchamana” (indication with eyes). For the sake of argument, if it is

accepted that any gesture was made by the appellant, then in what response the said gesture was made, is also the question, which was required to be considered by the learned trial Judge. It may not be a gesture to confirm the demand or to reiterate the practice developed by him. So there is clear missing of evidence qua the demand and in all such cases, if the prosecution is not able to successfully prove the element of demand, the appellant deserves acquittal.

6. Shri A.J. Desai, learned Additional Public Prosecutor, while arguing each of the points placed by Ms.R.V. Acharya, learned counsel appearing for the appellant, has pointed out that the alleged inconsistencies in the evidence of the panch no.1-PW-4 and the complainant are of minor nature. It is not the case of the prosecution from the very beginning that the specific amount was demanded on a specific day. The grievance of the complainant was against the corrupt

practice developed by the appellant. It is the say of the complainant from the very beginning that he was even being harassed, that part has been narrated by him in his deposition and he has replied the question asked by the defence counsel. The local competent authorities had not issued licence to the complainant to do the business of repairing of instruments of Weights and Measures, but it emerges that the complainant had approached the higher officers of the Department in the State and the said higher/superior officers had issued necessary licence/ authorisation to carry on such business. It is in evidence that one big machine repaired and tendered for certification was cleared by the Local Authorities. It is also emerging from the evidence that on account of either complaint made by the complainant or for some other reason, the senior officers had made inquiry about the decision taken by the appellant and not cleared two big machines. So the relations, even for the sake of argument if it

is accepted that, were strained, by itself would not make the complainant condemnable witness. A person who goes to the office of the ACB obviously would have developed some ill-feeling or feeling of grievance, otherwise there is no reason for a complainant to approach the ACB office. Exception is decoy trap in the ACB cases where a person is giving bribe and ultimately he is made the complainant who is not the person aggrieved, but he is the helping hand to the ACB. The appellant ought to have given satisfactory evidence with documents to justify the stand taken by him as a defence plea in response to the last question asked by the learned trial Judge at the time of recording his statement under Section 313 of the Code of Criminal Procedure, 1973. It is rightly submitted that some part of this explanation is not clear and there is an element of vagueness. It is true that the appellant is not supposed to prove anything and can successfully show or point out a probability capable of uprooting the

case of the prosecution or making the case of the prosecution doubtful. So even if the principle of preponderance of probabilities is applied, the explanation given by the appellant is not found satisfactory because he was under obligation to rebut the presumption raised against him.

7. According to Shri Desai, learned Additional Public Prosecutor, the prosecution has satisfactorily proved the passing of bribe amount to the appellant. There may not be any verbal conversation but in number of cases, this Court and the Apex Court has also observed that successful proof as to the acceptance of illegal gratification automatically proves a demand hidden in it. Here in the present case, certain gestures were made by the appellant by giving indication with his eyes and it is in evidence that this gesture was made in response to one statement made by the complainant, whereby he has requested that “he would also charge him

accordingly ?, even though these instruments which have been tendered for issuance of necessary certificate are being used mainly by themselves or their family members”. In response thereof, this gesture was made and panch as well as complainant both have consistently stated in the deposition that the appellant had shown inclination to do something. Thereafter, the receipt of payment of Rs.200/- was prepared. In the present case, the entire bunch of currency notes was not handed over, which is neither the case of the prosecution nor it was submitted to any of the witnesses examined. It is clear from the evidence, according to Shri A.J. Desai, that an amount of Rs.200/- was paid and thereafter, certain conversation had taken place. In the mean time, the appellant was asked a question whether he would accept the amount from him ?, and in response of that question, the said gesture was made by the appellant. This part of the evidence when is found consistent and reliable, the learned trial Judge was right in

saying that the element of demand has been satisfactorily proved within the meaning of scheme of the Act. There was no scope for the appellant to accept a single rupee beyond the amount of Rs.200/- towards Government fees because the table of account was already with him and, therefore only, he had prepared the receipt of Rs.200/-. There is ample force in the say of Shri Desai, learned Additional Public Prosecutor. In the present case, it was not even possible for the appellant to take up a plea that this is a case of forcible planting of amount because part of the bribe amount has been recovered from the pocket of the appellant and one muddamal currency note of Rs.20/- was found lying on the table. Why one currency note was found on the table was required to be replied by the prosecution. In absence of any explanation in respect of the same, it could have been argued by the defence side that because of the attempts made by the complainant to plant the amount forcibly, one of the currency notes might have missed and it

may have fallen down on the table. But because there is consistency in the evidence of panch no.1 and the complainant that the appellant after accepting the entire amount of bribe of Rs.80/- decided to return the amount of Rs.20/- i.e. one currency note of denomination of Rs.20/-, but the complainant had not accepted the same and, therefore, it was kept on the table. It is likely that the appellant might have thought that after applying stamps on the instruments which were checked by him, the appellant may take up the said currency note. If any inference is not drawn in this regard, the Court cannot ignore one aspect which has been recorded in the panchnama that one currency note of denomination of Rs.20/-, part of the muddamal currency notes, given to the complainant at the time of drawing of first part of panchnama, was lying on the table and as per two prosecution witnesses, this currency note was lying on the table at the instance of the appellant and on account of its non-acceptance by the complainant.

8. Both the hands of the complainant were seen under the ultraviolet lamp and they were found stained with anthracene powder marks. Same is the case with the appellant. One of the hands of panch witness was also found stained with anthracene powder as he had taken out muddamal currency notes of Rs.60/- from the pocket of the appellant along with one small plastic wallet. The articles found in the plastic wallet links the appellant with the ownership and as a person user of that wallet. The said wallet was also found stained with anthracene powder. The anthracene powder was also seen on the clothes of the appellant. One stain was also found near one of the eye-brows of the appellant and was also found on the pant put on by the appellant. It is not suggested either to complainant or to panch no.1 that the appellant has ever left his chair in which he was sitting when both the complainant and the panch no.1 had entered. It appears that all the while the appellant was sitting on the chair. So it was not possible for the

complainant to put the muddamal currency notes in the pocket of the appellant forcibly or against the wish and will of the appellant. The act of returning one of the currency notes of denomination of Rs.20/- by the appellant makes the acceptance willful, and an acceptance under any understanding or agreement. The prosecution if is able to successfully prove even from circumstances that the amount tendered to the appellant has been accepted under an understanding or an agreement to accept the illegal gratification, the Court can successfully raise the presumption against the appellant. Here the learned trial Judge, according to Shri Desai, has rightly raised the presumption against the appellant and has appreciated this part of evidence.

9. While evaluating the oral submissions made before the Court, keeping in mind the oral evidence led during the course of trial, the Court finds ample force in the submissions of Shri A.J. Desai, learned Additional Public Prosecutor. It is neither challenged that the

appellant was not a public servant nor was any issue before the learned trial Judge. It is true that the relations between the complainant and the appellant were estranged or at least were not cordial. The local officers of the department of Weights and Measures of District Valsad might not have felt happy as the complainant had brought necessary licence/authorization to carry on business from the higher/ superior officers at Gandhinagar. But normally when a trader, as a matter of course, is supposed to visit a particular Government office or statutory authority, he would not try to disturb his relations; on the contrary, the tendency of such a trader would be to establish or to develop cordial relations to get his works done smoothly. The basic allegation in the complaint is that the appellant had developed the practice to charge 40% amount of the actual Government fees from anybody who comes for work to him. So this is not a case of demand, according to Shri Desai, in stricto senso. So the prosecution was under obligation to prove that the allegation in the complaint

of development of such practice was required to be proved. Such proof can be brought on record by circumstances and by any type of legal and convincing evidence, such circumstances can be brought on record and can be proved by the prosecution. The amount of Rs.80/- received by the appellant would be equal to 40% amount of the actual Government fees i.e. Rs.200/-. The amount of Rs.200/- which was required to be paid as actual fees to the appellant is shown in detail by the complainant in the complaint Ex.17. The bills i.e. documents, seized corroborate the version of the complainant in the complaint Ex.17. Such an oral evidence has been given by the complainant. So it is clear that the complainant has proved one aspect that on 05th November, 1985, he was required to pay the amount of Rs.200/- as actual Government fees for the work which was to be done by the office of the appellant. It is in evidence that the appellant was informed about visit of the complainant two days prior to the incident. So the complainant was sure that on 05th November, 1985, the appellant would be

available. The complainant, therefore, was able to narrate the details of the type of work which was required to be done in the office of the appellant while lodging the complaint and, therefore only, the trapping officer had applied anthracene powder only on the currency notes to be given as bribe i.e. Rs.80/-. Three currency notes of were of denomination of Rs.20/- and two currency notes were of denomination of Rs.10/-. The figure of Rs.80/- tallies with the allegation made by the complainant in his complaint about 40% charges of the appellant towards bribe. It is in evidence that no verbal conversation had taken place immediately prior to transfer of amount of bribe and the appellant has never uttered about the bribe amount. Neither he had quantified nor he had attempted to ask whether the complainant had brought the bribe amount or not. The complainant had asked after paying the amount of Rs.200/- towards Government fees, which was necessary payment, whether he (accused) would accept the same amount from him (complainant) though the articles were mainly to be used by themselves and their

family business; and at that time, the appellant did not respond to that as to what the complainant was talking about and what amount ? It was not the response of the appellant that nothing is required to be paid by the complainant as he has already paid the prescribed Government fees and the receipt is being prepared. There is some conflict as to whether the amount of Rs.80/- i.e. bribe amount, received by him, was taken out by the complainant and given to the appellant prior to preparation of the receipt of Rs.200/- or after getting the receipt from him. But some inconsistencies in this regard are not found fatal to the case of the prosecution because the amount of Rs.200/- was never the bribe amount. The amount of Rs.80/- which was given to the appellant was the bribe amount. The currency notes of Rs.80/- were not found on the table like the amount of fees when the second part of panchnama was drawn. How and why the amount of Rs.60/- went inside the pocket of the appellant, was the question and the prosecution has successfully replied this question by the evidence of panch witness and

the panchnama. It is true that the complainant is a trap witness, so his evidence in this regard requires corroboration. So the evidence of panch witnesses is the direct evidence, so also, useful evidence as corroborative piece of evidence to the complainant. On this point, it is established beyond reasonable doubt and by satisfactory evidence that some gestures were made by the appellant and though the panch no.1 was sitting at a certain distance from where the place of sitting of appellant, this panch witness was able to notice the said gestures. The act of returning one currency note of Rs.20/- makes the gesture made by the appellant a conduct of accused. It is settled that the conduct of the appellant can be considered as circumstantial evidence; otherwise he would have neither made any gesture to the complainant nor accepted the amount of Rs.80/- nor even would have pocketed the amount of Rs.60/- by returning one currency note of Rs.20/- to the complainant. It appears that on account of the instructions given by the trapping officer Shri Brahmbhatt, the complainant was not to accept the said

amount of Rs.20/- and, therefore, it was lying on the table but according to him, even if the complainant ought to have accepted the said amount of Rs.20/-, it would not have gone against the prosecution because once the amount is accepted under an understanding, it is an acceptance of illegal gratification. Even if the appellant had handed over the amount saying that this time he would not accept and would see them on the next occasion also would make him guilty of the charge because on accepting the amount, the onus to prove the same would shift on his shoulder and it would be obligatory on his part to rebut the onus by showing probabilities. Here it is not such a case and, therefore, the learned trial Judge, according to me, cannot be said to have committed any error while linking the appellant with the crime. It is true that the principle pointed out by Ms.R.V. Acharya, learned counsel appearing for the appellant, is a well accepted principle that the prosecution is supposed to prove the element of demand, but here in the present case, the type of demand is of different and the same

has been proved in a particular manner by leading circumstantial evidence i.e. conduct of the appellant and recovery of the amount as the amount willfully accepted by the appellant.

10. The inimical terms pointed out by the appellant in his statement under Section 313 of the Code of Criminal Procedure, 1973, are not found sufficient to rebut the presumption of amount of illegal gratification. The description about passing of the bribe amount from the complainant to the appellant is found satisfactorily proved if the entire Examination-In-Chief as well as cross-examination of the complainant is read in the background of the contents of the panchnama. There is no inconsistency of material nature and, therefore only, the learned trial Judge has discussed the evidence of two material prosecution witnesses namely the complainant and the panch no.1. The Courts are entitled to draw inferences and such inferences cannot be equated with either conjectures or surmises.

The inferences should be objective and based on the evidence legally admissible. It should sound a logic. So the argument advanced by Ms.R.V. Acharya, learned counsel appearing for the appellant, is not found acceptable that the finding is based on conjectures and surmises, and the appellant has been victimized because the complainant was feeling that he was being harassed by the appellant. If any citizen even after developing inimical feelings or feeling of grievance or even prior thereto decides that a public servant has developed a particular mode to accept the amount of bribe, he can make a test case and tender himself before the Department of ACB and request the Department to arrange a trap for the purpose. The Courts are not coming across such or similar cases but it is not always that the ACB should find out punters to arrange for a decoy trap. Here in the present case, the complainant without any grievance or the inimical terms with the complainant could have gone to the office of the ACB to see that

the corruption is curbed in the department where he has frequent dealings.

11. The aforesaid ratio of the decision cited by Ms.R.V. Acharya, learned counsel appearing for the appellant, in the case of T. Subramanian (supra) in light of the above discussion, would not help the appellant because this is not a case of mere recovery of amount. This is the case of sufficient evidence of acceptance of amount of illegal gratification and the amount of bribe. The facts of the cited decision are also materially different. In the cited decision, there was a specific case of clear demand placed by the prosecution. So all the three elements were required to be proved independently by cogent evidence and on set of facts, the Apex Court has made observations which have been relied upon by Ms.R.V. Acharya.

12. So accepting the reasons assigned by the learned trial Judge and in view of the

aforesaid observations and discussion, I do not find any merit in this appeal against the judgment and order of conviction and the appeal qua the judgment and order of conviction is therefore required to be dismissed.

13. It is the alternative submission made by Ms.R.V. Acharya, learned counsel appearing for the appellant, that the learned trial Judge has imposed rigorous imprisonment for one year. The finding of the learned trial Judge is mainly based on the criminal misconduct of the appellant. There is no prescribed minimum punishment either under Section 161 of the Indian Penal Code or under Section 5(2) of the Act qua the nature of offence which is not proved against the appellant. Ultimately, on conviction, the Government employee loses each and every benefit and privilege which is available to a Government employee and he would be terminated from the service. It is observed by the Court that termination of a

Government employee would be a civic death. In such a situation, the period of sentence should be very relevant, especially when there is no minimum punishment prescribed under the law. The learned trial Judge ought to have awarded some lesser punishment. At least this Court should show some leniency. The appellant was on bail throughout the trial. He was on bail pending trial and he was of 42 years of age at the time of incident. So after a lapse of about 22 years, he must have reached the age of 64 years. Ms.R.V. Acharya is not aware about the present family status of the appellant and his socio-economic background but she has rightly submitted that he may be playing with his grand-children. At this time, if he is asked to go to jail for one year, it would be too harsh and torturous for the family members of the appellant, who were not there on the day on which the appellant was trapped. In such a situation, the Court should impose lighter punishment, if possible by increasing the amount of fine. The appellant

was trapped while accepting the bribe amount of Rs.80/- and he has paid the amount of Rs.2000/- towards fine. The Court finds that the amount of fine imposed by the learned trial Judge cannot be said to be inadequate because Rs.1000/- had its value in the year 1987-88, so the Court is of the view that there should be reduction in the substantive period of sentence and therefore, the same is required to be reduced to one month.

14. In view of above observations and discussion, the present appeal is hereby partly allowed. The judgment and order of conviction dated 06th June, 1989, passed by the learned Special Judge, Valsad at Navsari, in Special Case No.1 of 1987, is hereby confirmed; and the judgment and order of sentence dated 06th June, 1989, passed by the learned Special Judge, Valsad at Navsari, in Special Case No.1 of 1987, is hereby reduced and modified to the extent that instead of rigorous imprisonment for one year for the offence punishable under Section 161 of the Indian Penal Code, the appellant shall

now undergo rigorous imprisonment for one month. Similarly so far as the offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947 is concerned, instead of rigorous imprisonment for one year, the appellant now shall undergo rigorous imprisonment for one month. As the appellant has already paid the amount of fine, the order of sentence qua fine has remained unaltered so far as both the aforesaid offences are concerned. The substantive sentence is hereby ordered to run concurrently.

15. As the appellant is enjoying bail since beginning of the trial, he should be given some reasonable time to surrender and, therefore, the appellant is directed to surrender himself within a period of 6 (six) weeks from today to serve the sentence, failing which the learned trial Court shall issue a non-bailable warrant against the appellant to secure the custody of the appellant so that he can be sent to jail for serving the sentence. The bail bond of the

appellant shall stand cancelled.

(C.K. Buch, J)

Aakar